

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

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SPECIAL MEETING

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THURSDAY,
JULY 18, 2002

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The Special Meeting of the District of Columbia Zoning Commission convened at 6:00 p.m. in the Office of Zoning Hearing Room at 441 4th Street, N.W., Washington, D.C., Carol J. Mitten, Chairperson, presiding.

ZONING COMMISSION MEMBERS PRESENT:

| | |
|-----------------|---------------|
| CAROL J. MITTEN | Chairperson |
| ANTHONY J. HOOD | Vice Chairman |
| PETER MAY | Commissioner |
| JOHN PARSONS | Commissioner |
| JAMES HANNAHAM | Commissioner |

COMMISSION STAFF PRESENT:

Alberto P. Bastida, Secretary, Zoning Commission

OFFICE OF ZONING:

Sharon Sanchez

OFFICE OF PLANNING:

Jennifer Steingasser
Karen Thomas

D.C. CORPORATION COUNSEL

Alan Bergstein, Esq.

P-R-O-C-E-E-D-I-N-G-S

6:00 p.m.

CHAIRPERSON MITTEN: Good evening, ladies and gentlemen. This is a special public meeting of the Zoning Commission of the District of Columbia for Thursday, July 18th, 2002. My name is Carol Mitten and joining me this evening are Vice Chairman Anthony Hood and Commissioners Peter May, John Parsons and James Hannaham.

The case that we are discussing this evening -- I think the single item on our agenda -- is proposed action on Zoning Commission case number 01-32TA. Mr. Bastida, did you want to just introduce that case for us? And if not, then I can do it.

SECRETARY BASTIDA: No. Yes, Madame Chairman. Number -- first item is preliminary matters and the staff has no preliminary matters. The proposed action is Zoning Commission case 01-32TA, related to concrete plants. The staff have provided you with all the information in the record and requests an action on this matter. Thank you.

CHAIRPERSON MITTEN: Thank you, Mr. Bastida. I think the easiest way to proceed is just to go through the latest -- the latest filing from the Office of Planning, which is dated July 10, 2002.

And if we could focus on Appendix A, there's some additional recommendations that Office of Planning has made and

1 let's just go through those one by one.

2 And in the preface to 802.17, "and asphalt" is
3 being deleted because that is not -- asphalt plants are not
4 permitted in the CM District. They're only permitted in the M
5 District.

6 I'll just keep going and then if people have
7 anything that they want to add or comment on, just jump in.

8 I don't -- does anyone have any issues with
9 802.17(a)? And 802.17(b), what we were striving for was some
10 similarity with the regulations as it relates to trash transfer
11 facilities.

12 And in -- I think (b), since we haven't been able
13 to find a definition of residential streets. And there is some
14 language in 802.4(f) that I would propose to substitute, which
15 is, "There shall be no truck access parking standing or queuing
16 to the facility from any street or block long portion of a street
17 for which 50 percent or more of the abutting properties on either
18 side are used for residential purposes." And then it goes on
19 from there.

20 But I think that that would capture what we were
21 trying to capture. And I believe everyone has a copy of the
22 language in 802.4(f).

23 Any concerns about (c)? Any concerns about (d)? I
24 was going to suggest that we might want to delete the last five
25 words of (d), "and delivery of material," given that we don't

1 have a definition of material and that the only way that there
2 would be kind of an offensive delivery of material would be by
3 truck. And we're already capturing that earlier in (d), that
4 that is probably just redundant language and it would just cause
5 confusion rather than any kind of clarification. So I would
6 propose that we delete "and delivery of material" from (d).

7 In (e) and (f), there's some redundancy between (e)
8 and (f) because the standards of external effects do relate to
9 noise, dust and fumes, among other things.

10 So I would propose that we delete the words "noise,
11 dust and fumes" from (e), and it would read, "Due to traffic
12 parking or other objectionable conditions," and then in (f) we
13 would pick up "noise, dust and fumes" under the standards of
14 external effects.

15 In (f), I think the proposals later in the test,
16 related to deleting (i) and (j), which would be for the BZA to be
17 seeking compliance with other regulations that are not related to
18 land use, also would apply to compliance with the D.C. Noise
19 Control Act and Standards. So I would propose that (f) just be
20 limited to, "The facility shall meet the standards of external
21 effects pursuant to Section 804."

22 In (g), we had -- and when we did the EEF
23 regulations, we had some additional language that we included,
24 that I would propose to include at the end of (g), that says,
25 "Use of barbed or razor wire that is visible from neighboring

1 property or public space is prohibited." That will give some
2 leverage to the BZA when they do the special exception, that they
3 can prohibit that type of wire.

4 Under (h), I think I'll just ask Mr. Parsons to
5 handle this one on the record for us. The -- in (h)(2), it says,
6 "The trees shall be a minimum of six feet to eight feet in height
7 when planted," and which really suggests that the minimum is
8 going to be whatever the lower height is. And Mr. Parsons could
9 you make a suggestion about what would be an appropriate minimum
10 height?

11 CHAIRPERSON PARSONS: Sure. But I wanted to ask
12 Jennifer first. Why is it just the side and rear yards? How
13 about along public space? Do we have some real reason for not
14 including the front yard?

15 MS. STEINGASSER: No, sir, we do not.

16 CHAIRPERSON PARSONS: What do you think? You like
17 front yards?

18 MS. STEINGASSER: Yes, sir, we do. I'm checking to
19 see whether we drew the reference from the solid waste
20 intermediate recycling facility, but they don't specify even to
21 this degree. So including the front yard would be fine.

22 CHAIRPERSON PARSONS: Okay. And I think eight feet
23 is better. You specify six to eight, you get six. Eight is easy
24 to measure, you know, a spread, and certainly would have a better
25 look.

1 CHAIRPERSON MITTEN: All right. So that would be -
2 - in the preface to (h), we would say, "Landscaped area of
3 evergreen trees shall be maintained in all yards," or do you want
4 to delineate them in all required yards?

5 I can't hear you if you don't turn on your
6 microphone.

7 SECRETARY BASTIDA: I'm sorry. The front yard is
8 not a required yard.

9 CHAIRPERSON MITTEN: Okay. Then how should we
10 capture that? Shall be maintained in the side and rear yards and
11 along all public rights of way?

12 MR. BERGSTEIN: It sounds like you want it in the
13 right of way -- you mean, abutting the right of way? In the
14 front of the facility abutting the right of way?

15 CHAIRPERSON MITTEN: Well, it would be on the
16 property.

17 CHAIRPERSON PARSONS: Yeah, it could be in the rear
18 of the two, the yard --

19 CHAIRPERSON MITTEN: And along all public rights of
20 way -- and along al public rights of way.

21 And then on two will read, "The trees shall be a
22 minimum eight feet in height when planted."

23 And then I think we had another question for Ms.
24 Steingasser, which is in (h)(3). What we didn't quite understand
25 was the review and approval according to standards maintained by

1 the DCRA Soils Resources Branch. Is this something that is
2 normally done as part of the building permit process? Is this
3 something over and above what would normally be required?

4 MS. THOMAS: I believe that was over, a little over
5 and above, sort of an additional thing. And I think probably
6 that would be -- we were trying to be a little bit more forceful.
7 So if --

8 CHAIRPERSON MITTEN: Okay.

9 MS. THOMAS: -- that should be taken out, that's
10 fine.

11 CHAIRPERSON MITTEN: Well, the only thing is that
12 if -- I think we would need, for clarity sake, to make reference
13 to what other standards, or there are these standards -- where
14 can an applicant find the standards? So we're suggesting
15 compliance with something and it's just -- it's vague.

16 So I think we either need to specify the standards
17 or we need to delete it. I mean, given that -- what we may need
18 to do, since we're having a landscaping plan submitted and we do
19 delineate who referrals should be made to, is maybe we should
20 make a referral for recommendations from, among other things,
21 among other agencies, the Soil Resources Branch of DCRA. We
22 could add them to the list. What do you think about that?
23 Anybody got any thoughts about that? How does that sound to OP?

24 MS. STEINGASSER: I think that's a good resolution.

25 CHAIRPERSON MITTEN: Okay. Okay. So we will --

1 what we can do is modify three to just say, "Planting locations
2 and soil preparation techniques shall be shown on a landscape
3 plan," period. And then what we'll add to old (m), which is new
4 (j), would be, when among the referrals, that we would add a
5 referral to the Soil Resources Branch of DCRA. All right.

6 Then OP is proposing that we delete I and J. Any
7 concerns about (i) and (j)?

8 COMMISSIONER MAY: I'm sorry. Can we go back for a
9 second?

10 CHAIRPERSON MITTEN: Sure. I'm sorry.

11 COMMISSIONER MAY: The -- I'm sort of puzzling over
12 the front yard requirement. And I understand the logic of the
13 side and rear yards.

14 You don't necessarily know where these properties
15 will -- what will be the abutting use in these circumstances.
16 But we are theoretically talking about concrete plants in an area
17 where the -- where this use is allowed. And therefore expecting
18 to see some actual visual clue that it exists is not in itself
19 surprising, yet we're creating this need for a buffer zone on the
20 front side, in effect creating a requirement for a front yard in
21 this circumstance.

22 CHAIRPERSON MITTEN: Right. Right.

23 COMMISSIONER MAY: And I just -- I don't know if --
24 I mean, if that is what we're requiring, is that what we should
25 be saying to start with? Because otherwise, I mean, you know,

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1 how do you determine how much soil is necessary?

2 CHAIRPERSON MITTEN: Right.

3 COMMISSIONER MAY: Are we going to then leave that
4 up to the Soil Resources Branch in terms of what -- how much soil
5 is necessary to support the evergreens? You know what I mean?
6 It's sort of backing into this question of a front yard
7 requirement.

8 CHAIRPERSON MITTEN: I think what this -- the
9 language that is proposed gives -- I mean, what we're trying to
10 do is give guidance to the BZA so when they get a specific case,
11 and they're evaluating this specific proposal for a concrete
12 plant in the special exception process, that they have some
13 guidance from us.

14 And one of the things that we're providing guidance
15 for is basically, wherever you can see it, and a lot of places
16 where you can see it, it's across a street, and across the street
17 is residences. I mean, we know that.

18 Those are potential locations. That we're saying,
19 look, you've got to think about that. We're not saying it has to
20 be an unbroken line of evergreen trees or anything like that.

21 We're saying there should be some trees and they
22 should be a certain size tree, and you should be looking for them
23 in these locations. And then let the BZA decide what's
24 appropriate given the particular context.

25 COMMISSIONER MAY: I understand the point. I'm

1 just not sure what guidance we are effectively given --

2 CHAIRPERSON PARSONS: I don't think you have a copy
3 of the original report. And I'll pass down page 15.

4 COMMISSIONER MAY: Okay.

5 CHAIRPERSON PARSONS: And I guess that's what I had
6 in mind, not the oaks or whatever, just that there's a setback.
7 There's a sense of place here, as opposed to the other
8 photographs that you're probably more familiar with --

9 COMMISSIONER MAY: Yeah. Well, the one I'm used to
10 is up on 5th Street, Northeast. That's the one that I drive by.
11 Okay. Well, I --

12 CHAIRPERSON PARSONS: But you're right. I mean, it
13 is an industrial zone and we're not making their neighbors do
14 this. And maybe it's too stringent. I don't know. Just trying
15 to upgrade the neighborhood.

16 COMMISSIONER MAY: Well, I see the point. It just -
17 - I don't have a big issue and want to strike it. It just -- it
18 raised a lot more questions than I was able to sort of formulate
19 an answer to on the spot. Anyway, thank you very much for that.

20 CHAIRPERSON MITTEN: Thank you.

21 MR. BERGSTEIN: Madame Chair, I'm sorry, but are
22 you going to be keeping in the introduction to what is currently
23 page (h)(3) that calls for the landscape plan to be submitted to
24 DCRA? Or are you going to take care of the landscape plan, and
25 what is now section (n), which does call for a landscape plan to

1 be submitted, with the application, and just build in that the
2 plan should show the planting locations and soil preparation
3 techniques at that time?

4 CHAIRPERSON MITTEN: Well, that's fine. I mean, I
5 think that's fine. And it's probably better because then people
6 aren't looking in multiple places.

7 So I think the suggestion -- I mean, Mr. Bergstein
8 isn't going so far as to make a suggestion, but I think what he's
9 implying is that it might be better that when we -- rather than
10 having (h)(3), when we have the requirement to submit a
11 landscaping and lighting plan for the facility in old (n)(2),
12 that that's the appropriate time to say, or the appropriate place
13 to say, that the landscaping plan shall include planting
14 locations and soil preparation techniques.

15 Anybody have a problem with moving that language?
16 Oh. Okay.

17 All right. We're back to (i) and (j). Anyone have
18 a problem with deleting (i) and (j)? All right. Old (k) or new
19 (i), as it is, I would suggest moving that to the list in old
20 (n), the list of things that the applicant shall provide.
21 Because this is again just another component of how the facility
22 will function, and so I think it's more appropriately in the
23 list. And so it would become (n)(4) or new (n)(4), as the case
24 may be.

25 Any concern with deleting (l), which is the

1 restoration requirements? Okay. Moving on to old (m) or new
2 (j). We have an addition of -- well, let me step back from that,
3 which is the language that we normally employ is not that the
4 Board will make referrals directly, but that the Board utilizes
5 the services of the Office of Planning for coordination.

6 So what I would suggest is we use language that we
7 find elsewhere in the ordinance, which would say something like
8 this: "The Board shall submit the application to the director of
9 the Office of Planning for coordination and review, report an
10 impact assessment, along with reports in writing of all relevant
11 district departments and agencies, including, but not limited to"
12 -- now we're back to the language proposed -- "the D.C.
13 Departments of Public Works, Transportation, Health, the Soil
14 Resources Branch of DCRA," and so on and so forth, including the
15 language about the historic districts. All right?

16 And then the language under (m)(1), which is that
17 the department shall report to the Board at least seven days
18 prior to the set date for the hearing on such application. Even
19 though that was inserted at our request, what we did discover is
20 that in the procedures or, I guess, the rules for -- that govern
21 the Board of Zoning Adjustment -- in 3114.2, that's already
22 stated that those reports are due within that timeframe. So I
23 would propose deleting (m)(1) as being redundant with 3114.2.

24 Then we've added a few things to (n). I won't
25 repeat that. And then I would suggest that the sentence, if

1 you're looking at the copy that has color, there is a sentence
2 that's in black that is (n)(1), (2) or (3), but it's a
3 standalone, that that should be it's own section, which would be
4 new (1).

5 And I would suggest the following additional
6 language at the beginning of that sentence, which is, "In
7 addition to any other conditions the Board deems necessary to
8 mitigate any adverse impacts of the proposed use," then, to the
9 language proposed, "the Board may impose additional" -- so that
10 word "additional" would be added -- "conditions pertaining to --"

11 And then we would just pick up with the proposed
12 language, so that it doesn't imply that only those conditions
13 enumerated in this section are -- may be imposed.

14 And then finally, we have a proposed addition to
15 801.7. And I would suggest that rather than calling out concrete
16 plants alone, because they are not the only use subject to
17 special exception review in CM, that 801.7(j) read, "Any light
18 manufacturing, processing, fabricating or repair establishment,
19 except those uses for which special exception approval is
20 required pursuant to section 802." That way we would be
21 highlighting the fact that we would expect that any of the uses,
22 any of the three uses, that require special exception, not just
23 concrete plants.

24 All right. Any questions about those proposed
25 modifications to the Appendix A that Office of Planning has

1 provided?

2 All right. Then I would move approval of Zoning
3 Commission case number 01-32TA, with the amendments we discussed
4 in the last 20 minutes.

5 COMMISSIONER MAY: Second.

6 CHAIRPERSON MITTEN: All right. Any further
7 discussion? All those in favor, please say aye.

8 (Chorus of ayes.)

9 CHAIRPERSON MITTEN: Those opposed, please say no.

10 (No response.)

11 CHAIRPERSON MITTEN: Who's going to record the vote
12 for us this evening? Ms. Sanchez.

13 MS. SANCHEZ: Yes. Staff would record the vote
14 five to zero to zero, Ms. Mitten moving, Mr. May seconding, and
15 Commissioners Hannaham, Hood and Parsons in favor of the motion.

16 CHAIRPERSON MITTEN: Thank you. Any further
17 business for this special public meeting, Mr. Bastida?

18 SECRETARY BASTIDA: No, Madame Chairman. The staff
19 has no further business.

20 CHAIRPERSON MITTEN: Thank you. I now declare this
21 special public meeting adjourned.

22 (Whereupon, the special meeting in the above-
23 entitled matter was adjourned at 6:20 p.m.)